



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1994

Ms. Claudia Nadig  
Assistant General Counsel  
Texas Workers' Compensation Commission  
Southfield Building  
4000 South IH-35  
Austin, Texas 78704

OR94-604

Dear Ms. Nadig:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26242.

The Texas Worker's Compensation Commission (the "commission") received requests for the following information:

- (1) copies of documents to a legislative oversight committee containing recommendations or comments concerning the commission's Extra-hazardous Employer Program (the "program");
- (2) copies of documents concerning requests for investigation by the division of compliance and practices;
- (3) copies of follow-up inspection records completed by the division of worker's health and safety.

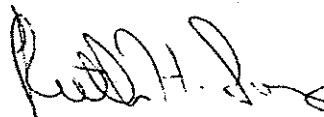
You contend that this information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have provided information that shows the commission is involved in pending litigation concerning the program. The plaintiff has alleged that the program is preempted by federal law, is invalid under Texas law, and that the commission should be enjoined from enforcing the program. You also submitted to this office for review documents responsive to the request. A review of those documents indicates that the documents are related to the litigation. Since the commission has met its burden of showing that section 552.103(a) is applicable, the documents at issue may be withheld from disclosure.<sup>1</sup>

In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the commission's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 26242

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<sup>1</sup>We note that if the information in the memorandum to the legislative committee was published or put in a report available to the public during the pendency of the litigation this information may not then be withheld from the requestor. Gov't Code § 552.007 (records made public may not be selectively withheld); see also Open Records Decision No. 454 (1986) at 2.

Enclosures: Submitted documents

cc: Ms. Jane A. Matheson  
Hughes & Luce  
111 Congress Avenue, Suite 900  
Austin, Texas 78701  
(w/o enclosures)